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Opinion following rehearing

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

A.N., a Minor, etc., Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B206928 (Los Angeles County Super. Ct. No. BC333416)

APPEAL from an order of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed in part; reversed in part.

McNicholas & McNicholas, Matthew S. McNicholas, Christina J. Smith; Esner, Chang & Ellis, Andrew N. Chang, and Stuart B. Esner for Plaintiff and Appellant.

Collins Collins Muir + Stewart, Tomas A. Guterres, Douglas Fee, and Eric C. Brown for Defendants and Respondents.

A.N. filed a negligence-based complaint alleging the County of Los Angeles was liable because personnel at the juvenile hall failed to protect him from a sexual assault by another juvenile inmate. As the trial court was preparing to call a panel of prospective jurors, the County filed a motion for judgment on the pleadings (JOP) on the ground that it was immune from liability given the nature of the negligence-based claims alleged in A.N.'s complaint. The trial court granted the County's motion for JOP, and entered an order dismissing A.N.'s action. A.N. then filed this appeal.

We agree with the trial court that the allegations in A.N.'s complaint place his case within the scope of the immunity from liability afforded the County under Government Code section 844.6, subdivision (a) (section 844.6(a)).[1] We also agree with the trial court that A.N. may not amend his complaint to allege facts placing his case outside the scope of the County's immunity. More specifically, we agree with the trial court's ruling that, because A.N.'s pre-lawsuit government claim (see § 900 et seq.) did not include any facts informing the County that he sought damages arising from an alleged failure to summon medical care (§ 845.6), he is barred from including such allegations in any ensuing civil complaint. Finally, we agree with A.N. that he should have been granted leave to amend his complaint to allege a violation of a policy against so-called "double bunking" at the juvenile hall, but find the error is harmless as to the County because that claim, too, is barred by the immunity afforded the County under section 844.6(a). Finally, we find the JOP should not have been granted as to an individual defendant who allegedly caused A.N.'s injury. The order of dismissal is affirmed in part and reversed in part.

FACTS

A.N.'s Pre-lawsuit Government Claim

In October 2004, A.N. filed a County-printed, "fill-in-the-blanks," pre-lawsuit government claim for damages with the County. In a space designated for describing how his injury occurred, A.N. provided the following information: "While an inmate at the Juvenile Hall, claimant while sleeping he felt other inmate touch him, pull his pants

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1 All further section references are to the Government Code under otherwise noted.

down, forced him to turn over and raped him." (*Sic*.) In a space designated for explaining why he claimed the County was responsible, A.N. provided the following information: "Lack of supervision of other inmates known to have violent propensities."

In November 2004, the County denied A.N.'s pre-lawsuit government claim.

A.N.'s Complaint

In May 2005, A.N. (by and through his guardian ad litem) filed a complaint for damages against the Los Angeles County, Los Angeles County Sheriff Lee Baca, and "John Doe Deputy Sheriff Officers 1 through 15." A.N.'s complaint alleged causes of action for negligence, violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), failure to prevent violation of civil rights, violation of constitutional rights, conspiracy to conceal violation of constitutional rights, and violation of title 42 of the United States Code section 1985. All of A.N.'s causes of action were based on the following allegations: In April 2004, A.N. was in custody at the juvenile hall facility in Sylmar. While A.N. was in custody, John Doe Deputy Sheriffs 1 through 15 housed A.N. with another juvenile inmate whom they knew or should have known had violent propensities, and then failed to supervise A.N.'s safety. The other juvenile inmate sexually assaulted A.N. in his bed.

In October 2005, A.N. retained new counsel. In November 2005, A.N. filed a first amended complaint which named the County and "Does 1 through 100" as defendants. A.N.'s first amended complaint abandoned his civil rights and constitutional causes of action, and alleged causes of action for negligence, negligent supervision, and negligent infliction of emotional distress. A.N.'s factual allegations largely remained the same as in his original complaint. In 2006, A.N. filed a Doe amendment to his operative complaint to name County employee Edward Anhalt as "Doe 16." Later, the trial court granted A.N.'s request to identify Anhalt as "Doe 2," rather than "Doe 16."[2]

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2 From this point forward, our references to the County include Anhalt, except where otherwise noted for clarification.

The Case History

During the first half of 2007, the trial court set and continued trial of A.N.'s action a number of times. By summer 2007, the trial court had set A.N.'s case to begin trial on September 10, 2007. In August, in anticipation of the then-pending trial date, the County filed "Motion in Limine No. 12" to preclude A.N. from introducing evidence in support of any legal theories which did "not conform with" this pre-lawsuit government claim. More specifically, the County argued that A.N. should not be allowed to introduce any evidence that authorities at the juvenile hall had violated any County "written regulations, rules, policy and guidelines" in failing to provide medical care for A.N. after he had been attacked, and in failing to perform any other post-attack measures required by its regulations, rules and policies. In short, the County argued that A.N.'s case at trial should be limited to his alleged claim that authorities at the juvenile hall had negligently supervised his safety. Before the trial court addressed the County's motion in limine, other issues arose, and the trial court reset the trial date to October. In late September, in anticipation of the then-pending October trial date, the County filed "Motion in Limine No. 13" to preclude A.N. from introducing evidence in support of a theory that authorities at the juvenile hall had violated a County policy against so-called "double bunking" of juvenile inmates at the facility.

On October 17, 2007, A.N. submitted proposed joint jury instructions, along with a proposed joint statement of the case.

During a hearing on October 22, 2007, the trial court granted a motion to quash a series of "Doe" amendments which A.N. had filed and/or served shortly before trial,[3] and trial was reset, this time to January 15, 2008.

On December 14, 2007, the trial court heard argument on the County's motions in limine (Nos. 12 and 13) to preclude A.N. from introducing evidence that the County had "violated its own policies" in various ways in connection with the attack on A.N. at the juvenile hall. The court denied both motions in limine, ruling that A.N.'s pre-lawsuit

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[3] Earlier this year, we affirmed the trial court's order regarding the Doe amendments. (*A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058.)

government claim for "negligent supervision" had been broad enough to encompass his claims at trial that the County had failed to follow policies against the double bunking of inmates, and had failed to summon medical care after A.N. had been attacked.

On January 14, 2008, the parties appeared for trial, and A.N. served the County with a proposed jury instruction expressly based on section 845.6 — liability of public entity for failure to summon medical care for an injured prisoner. At the same time, A.N. served the County with a special verdict form for findings on the County's failure to summon medical care, and a new statement of the case which stated that A.N.'s lawsuit involved the County's failure to summon medical care after he had been attacked. During the afternoon session, the lawyers began arguing various remaining motions in limine. During the course of those exchanges, the trial court ruled that A.N. would be permitted to present evidence in support of his theory that the County had violated a "double-bunking" policy, and on his theory that the County had violated its policies by failing to collect DNA evidence, and on his theory that the County was liable for failing to summon immediate medical care for A.N. after he had been attacked. At the conclusion of the hearing, the court advised the parties that jury selection would begin the next day.

At the outset of matters on January 15, 2008, the trial court advised the parties that it had reviewed A.N.'s operative pleading more carefully, and had come to the conclusion that A.N.'s complaint made "no mention of double bunking" and contained "no pleading of the immediate medical care, failure to provide." The court then advised the parties that, in light of the claim which A.N. had actually alleged in his complaint, i.e., that the County negligently facilitated an attack by one prisoner on another prisoner, "[t]he issue of immunity need[ed] to be fully briefed."

On January 16, 2008, the County filed "Motion in Limine No. 15" to preclude A.N. from introducing any evidence "outside" of the scope of his pre-lawsuit government claim, and "not pled" in his operative complaint. On the same day, the County also filed a motion for JOP in which it argued that it was immune from the claims actually alleged in A.N.'s complaint under section 844.6. At a hearing the following day (January 17,

2008), the trial court decided that more time was needed for further briefing and to address the pending motions, and declined to call up a panel of jurors. The court set the matter for a further hearing on February 20, 2008.

At the hearing on February 20, 2008, the trial court granted the County's motion for JOP, and granted JOP in favor of Defendant Anhalt, and ruled that the County's Motion in Limine No. 15 was moot. On March 17, 2008, the trial court entered a final order dismissing A.N.'s action against the County and Anhalt.

A.N. filed a timely notice of appeal.

DISCUSSION

I. The Trial Court Properly Granted the County's Motion for JOP

A.N. contends his pre-lawsuit government claim provided the County with enough facts to enable it to investigate and settle all of the theories of liability he presented at the time of trial, and that this means the trial court erred in ruling that he could not pursue his "double-bunking" and "medical care" theories at trial. A.N. misses the point — the trial court granted the County's motion for JOP because the facts which A.N. had actually *alleged* in his operative complaint, comprising negligence-based claims arising from a sexual assault by one prisoner on another prisoner, showed that the County was immune from liability by virtue of section 844.6(a). The statutory language unambiguously provides: "[E]xcept as provided . . . in Sections 814 [contract], 814.2 [workers' compensation], 845.4 [interference with a prisoner's right to judicial review of his or her confinement], and 845.6 [failure to provide medical care to an injured prisoner], a public entity is not liable for . . . [¶] [a]n injury proximately caused by any prisoner." (§ 844.6, subd. (a)(1).) A.N.'s discussion of his procedural right, if any, to pursue his "double-bunking" and "medical care" theories at trial is not relevant insofar as the trial court's ruling on the County's motion for JOP is concerned.

Assuming we agreed with A.N. that the facts which he set forth in his pre-lawsuit government claim were sufficient to allow him later to pursue his "double-bunking" and "medical care" theories in his court action (an issue we address in the next part), the problem for A.N. — in opposing the County's motion for JOP — is that *he did not*

actually allege facts in support of those theories of liability in his operative complaint. Given the facts which A.N. *did actually allege in his operative complaint*, the trial court properly granted the County's motion for JOP. Under section 844.6(a), the County is immune from liability for injuries inflicted upon one prisoner by the hands of another prisoner.

II. The Trial Court Properly Denied A.N. Leave to Amend His Complaint

After granting the County's motion for JOP, the trial court denied A.N. leave to amend his complaint for two interconnected reasons. First, the trial court ruled that the information provided by A.N. in his pre-lawsuit government claim would not encompass his proffered "double-bunking" and "medical care" allegations in his court action, and, second, the court ruled that A.N. was "barred from amending his governmental [claim] due to [the] statute of limitations." On appeal, A.N. contends the trial court erred by denying him leave to amend his operative complaint to allege facts in support of his "double-bunking" and "medical care" theories of liability. We disagree insofar as A.N.'s "medical care" allegations are concerned.

Section 945.4 provides that "no suit for money or damages" may be filed against a public entity until a pre-lawsuit government claim in compliance with section 910 has been submitted to, and denied by, the public entity. Under section 910, subdivision (d), a pre-lawsuit government claim is required to include a "general description" of the claimant's injury. The purpose of a pre-lawsuit government claim is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455.) Under these general rules, we agree with A.N. that his pre-lawsuit government claim was sufficient, upon its denial, to allow him to commence his action against the County.

The issue in A.N.'s current case, however, is a little more nuanced than the basic sufficiency of his pre-lawsuit government claim. The issue is whether A.N. may allege *particular facts* against the County in his court action, given the information which he provided in his pre-lawsuit government claim. On this more focused issue, this is the

well-settled rule: a plaintiff may allege in a complaint any factual scenarios in support of liability against a public entity, provided the facts are "fairly reflected" in the information included in his or her pre-lawsuit government claim. (See, e.g., *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 280 (*Smith*).) Or, looked at from the opposing direction, "[a] complaint's fuller exposition of the factual basis [for a plaintiff's action] beyond that given in [a pre-lawsuit government] claim is not fatal, so long as the complaint is not based *on an* '*entirely different set of facts*.' " (See *Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 447 (*Stockett*), italics added.) The issue in the current appeal, therefore, is whether A.N.'s pre-lawsuit government claim "fairly reflected" his subsequent allegations about double bunking and/or his failing to summon medical care, or, conversely, whether those subsequent allegations are based on an "entirely different set of facts" than he included in his pre-lawsuit government claim.

This is A.N.'s position: the statement in his pre-lawsuit government claim that the County was liable for his injuries due to a "[l]ack of supervision of other inmates known to have violent propensities" is "fully consistent with [his] theory at trial that the County [wrongly] double-bunked [him] with an individual with known violent propensities." And, his claim that the County failed to provide medical care was "fairly included within the facts . . . noticed in [his pre-lawsuit government] claim. Plaintiff never fundamentally shifted the facts of his claim." This is the County's position: A.N.'s "new theor[ies] of liability did not reflect the facts in his [pre-lawsuit government] claim." Presented with these opposing perspectives, we turn to the published case law to measure who is correct.

A. The Published Cases

In *Connelly v. State of California* (1970) 3 Cal.App.3d 744 (*Connelly*), plaintiff's pre-lawsuit government claim alleged the Department of Water Resources "negligently provided him with inaccurate information as to the anticipated rise in the Sacramento River," and that, had he been given correct information, he could have taken appropriate precautions to protect his marina property. (*Id*. at p. 747.) This pre-lawsuit government claim alleging a "failure to provide accurate information" did not encompass plaintiff's

subsequent causes of action based on allegations that the Department had negligently released too much water from its dams. (*Id.* at p. 753.)

In *Nelson v. State of California* (1982) 139 Cal.App.3d 72 (*Nelson*), plaintiff's pre-lawsuit government claim alleged that he had suffered injuries as the " 'result of the failure of the Department of Corrections to diagnose and treat or allow [him] to maintain his ongoing medications.' " (*Id.* at p. 80.) This pre-lawsuit government claim for "medical malpractice" did not encompass plaintiff's subsequent cause of action based on allegations that personnel at the Chino prison facility had failed to summon immediate medical care in violation of section 845.6. (*Nelson*, at pp. 80-81.)

In *Fall River Joint Union School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431 (*Fall River Joint Union School Dist.*), plaintiff's pre-lawsuit government claim alleged he had been injured by a dangerous condition on school property — a heavy metal door that closed on him. This pre-lawsuit government claim did not encompass plaintiff's subsequent cause of action based on allegations that school personnel had "negligently failed to supervise students . . . engaged in 'dangerous horse-play.' " (*Id.* at p. 434.)

In 1989, we find *Smith v. County of Los Angeles*, *supra*, 214 Cal.App.3d 266. In *Smith*, plaintiffs' pre-lawsuit government claim alleged that the County had " 'cut into [a] hill' " to create a road, and that the " 'cut removed support' " for their houses and " 'created a landslide danger' " which damaged their properties. (*Id.* at p. 273.) This pre-lawsuit government claim was sufficient to encompass more than plaintiffs' inverse condemnation cause of action, and also encompassed plaintiffs' causes of action alleging nuisance and dangerous condition of public property. (*Id.* at pp. 279-281.)

In *Blair v. Superior Court* (1990) 218 Cal.App.3d 221 (*Blair*), plaintiff's pre-lawsuit government claim alleged: " 'Highway was iced over, car went out of control and collided with a tree.' " (*Id.* at p. 223.) This pre-lawsuit government claim was sufficient to encompass more than a claim that the state Department of Transportation had maintained a dangerous condition by failing to remedy accumulated ice, and also

plaintiff's theories that the road lacked guardrails, was improperly sloped, and did not have adequate warning signs. (*Id*. at pp. 224-226.)

In *Watson v. State of California* (1993) 21 Cal.App.4th 836 (*Watson*), plaintiff's pre-lawsuit government claim alleged that he was injured in a prison yard basketball game, and that the personnel at the prison " 'refused to treat him' " even though he was " 'suffering from an obvious and debilitating injury to his leg.' " (*Id*. at p. 844.) This pre-lawsuit government claim encompassed plaintiff's subsequent cause of action based on allegations that the prison's personnel had failed to summon immediate medical care in violation of section 845.6; it did not encompass plaintiff's cause of action that prison personnel were negligent, i.e., liable for medical malpractice, when treatment did occur. (*Watson*, at pp. 843-845.)

And, finally, in 2004, we have *Stockett, supra*, 34 Cal.4th 441. In *Stockett*, plaintiff's pre-lawsuit government claim alleged he had been "wrongfully terminated" for "supporting a female employee's sexual harassment complaints" against a supervisor. (*Id*. at p. 444.) This pre-lawsuit government claim was sufficient to encompass plaintiff's subsequent causes of action for wrongful termination based on theories of "illegal motivation" related to plaintiff's workplace objections to the supervisor's "conflict of interest" and plaintiff's workplace objections to purchases made without an "open bid process." (*Id*. at pp. 444-450.)

B. Analysis

The County holds a legal hand which consists of the following cards: *Connelly*, *Nelson*, *Fall River Joint Union School Dist.* and *Watson*. A.N.'s legal hand consists of *Smith*, *Blair* and *Stockett*. As we read the table, the County has the better hand when it comes to the "medical care" allegations in A.N.'s complaint. In our view, A.N.'s current case is most like *Nelson, supra*, 139 Cal.App.3d 72, in which the court held that a pre-lawsuit government claim alleging medical malpractice by a prison's personnel did not encompass subsequent allegations under section 845.6 for failing to summon medical care for an injury. Indeed, it is fair to say that A.N.'s pre-lawsuit government claim that the County's negligence helped cause a sexual assault is far more remote, fact-wise, from

his subsequent trial allegations under section 845.6 than were the pre-lawsuit and trial allegations at issue in *Nelson,* both of which, in a general sense, were associated with plaintiff's medical condition. We also find A.N.'s case akin to *Fall River Joint Union School Dist.*, *supra*, 206 Cal.App.3d 431, in which the court held that a pre-lawsuit allegation that a defendant had maintained a "dangerous condition" on its property did not encompass later trial allegations that the defendant negligently failed to "supervise horse-play."

In our view, the cases suggest that a temporal element comes into consideration when determining whether a pre-lawsuit government claim is based on different facts than subsequent allegations in a trial court action. In other words, where a plaintiff's pre-lawsuit government claim alleged facts which occurred before the event that precipitated his or her injury, and the plaintiff's subsequent trial allegations involve facts involved in the event itself that caused his or her injury, and/or arose after the event that caused his or her injury, there is a recognized "different set of facts" which precludes the pre-lawsuit government claim from encompassing the subsequent trial allegations. The same temporal element is present in A.N.'s current case — his pre-lawsuit government claim regarding negligent supervision involved facts which occurred before and/or facilitated the sexual assault, whereas his subsequent trial allegations involved an alleged failure to summon medical care which occurred after the attack was over. A.N.'s claims involve two different factual contexts.

In other words, the purported failure to provide medical care immediately after the rape was not a precipitating event to the rape. The tort claim's reference to negligent supervision leading up to the rape could thus not have encompassed this independent, and post-incident, act. Nor could it have put the County on fair notice of that independent claim and the need to investigate it, which is the very purpose of the Tort Claims Act.

This is especially applicable here given that governmental immunity was a preclusive defense to the negligent supervision claim. Because the County could rely on immunity, it would justifiably narrow the scope of its investigation.

In summary, we agree with the County that the trial court properly denied A.N. leave to amend his operative complaint to plead his proffered "medical care" allegations. The County is correct that granting leave to amend the operative complaint would allow "a complete shift in [A.N.'s] allegations," changing their focus from events before the attack to events after the attack.

A.N.'s "double-bunking" allegations, on the other hand, stand in a different stead. With regard to his double-bunking allegations, we find A.N.'s case more like *Blair*, *supra*, 218 Cal.App.3d 221, in which the court ruled that a plaintiff's pre-lawsuit government claim that he suffered injury when he skidded off an iced roadway and hit a tree encompassed more than a subsequent allegations that defendant failed to remove ice, and also encompassed subsequent allegations that the roadway lacked guardrails and was improperly sloped. In other words, in *Blair*, the plaintiff basically put into play all causal aspects of the accident and his injury. In a similar vein, A.N.'s pre-lawsuit government claim that his custodial keepers "negligently supervised his safety" fairly reflects his trial allegations that that his custodial keepers "wrongly double-bunked" him with a dangerous inmate. Both claims are associated with shortcomings by the County's personnel at the juvenile hall, leading to the sexual assault suffered by A.N. at the hands of another inmate.

There remains, then, one last issue. Does the trial court's denial of leave to amend to allege "double-bunking" facts mean that the court's ensuing order of dismissal must be reversed? We find that it does not. The problem for A.N. is that he cannot get past the immunity afforded the County under Government Code section 844.6(a), by recasting his "negligence" allegations into "wrongful double-bunking" allegations. In either of these alleged veins, the County remains immune from liability for any injury suffered by one prisoner at the hands of another prisoner. In short, whether or not the County violated an internal policy by placing A.N. in a situation where he could be attacked by a fellow inmate at the juvenile hall, or whether the County acted unreasonably, i.e., in a negligent manner, in placing A.N. in a situation where he could be attacked by a fellow inmate at the juvenile hall, A.N.'s injuries were caused by his fellow inmate, and the County is

immune from liability for A.N.'s injuries. For this reason, A.N. was not prejudiced by the trial court's denial of leave to amend, and the trial court's order of dismissal may not be reversed. (Cal. Const., art. VI, § 13.)

III. The Trial Court Improperly Granted JOP in Favor of Individual Defendant Edward Anhalt

Having concluded that the trial court properly granted JOP in favor of the County based upon the immunity afforded by section 844.6, we must return to Defendant Edward Anhalt, or "Doe No. 2," and to the question of whether the trial court also properly granted JOP as to him in his role as an individual defendant. In the context of a motion for JOP, we find that Defendant Anhalt should not have prevailed on the ground that A.N.'s pleading alleged insufficient facts to state a cause of action based in negligence against Defendant Anhalt.

A. The Standard of Review and The Pleading

A motion for JOP involves the same test on the sufficiency of a complaint as a demurrer, and, as such, is limited to an attack on the facts alleged on the face of the pleading or matters which can be judicially noticed. (See, e.g., *Cloud v. Northrop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999.) In A.N.'s current case, this means that his first amended complaint must be tested for the sufficiency of its alleged facts comprising his negligence claim against Defendant Anhalt nee Doe No. 2. A.N.'s first amended complaint, liberally construed as it must be, alleges the following facts:

> "In gathering information about Plaintiff and others, including but not limited [to] the age and offense for which each minor was detained, [Defendant Doe No. 2] knew or should have known which inmates were suited for sharing sleeping space with other inmates. Furthermore, [Defendant Doe No. 2] knew or should have known which inmates should be segregated, by race or otherwise, from other types of inmates or the general inmate population. [Defendant Doe No. 2] knew, or should have known, which inmates required constant one-on-one supervision when interacting with [other inmates]. [¶] . . . [¶]
>
> ". . . On or about April 4, 2004, [Defendant Doe No. 2] forced Plaintiff to share an enclosed, locked sleeping space/cell with [another inmate]. [Defendant Doe No. 2 then] failed to adequately supervise or

monitor Plaintiff and [the other inmate]. As a result of [Defendant Doe No. 2's] failure to adequately supervise [the other inmate, he] was permitted to sexually assault Plaintiff. [¶] . . . [¶]

"[Defendant Doe No. 2] . . . owed a duty of care to minor Plaintiff . . . and had a duty to supervise, monitor, investigate and control the conduct of all inmates, including [Plaintiff's assailant], by way of the special relationship existing between [Plaintiff's assailant] and [Defendant Doe No. 2].

"[Defendant Doe No. 2] also had a duty to adequately train County employees responsible for operating the Juvenile Hall in proper methods of supervision, management, control and monitoring of juvenile inmates.

"[Defendant Doe No. 2] knew or should have known that leaving juvenile inmates such as [Plaintiff's assailant] unsupervised would result in physical harm to Plaintiff.

". . . Despite having knowledge that the minors being detained at the Juvenile Hall had criminal propensities and therefore required heightened supervision, [Defendant Doe No. 2] failed to take any preventative action to control [Plaintiff's assailant]'s contact with Plaintiff . . . . [¶] . . . [¶]

"[Defendant Doe No. 2] knew or should have known that [Plaintiff's assailant's] aggressive behavior posed an immediate danger and threat to other inmates, including Plaintiff, and therefore had a specific duty to protect Plaintiff from the aggressive, hostile and violent sexual behavior of [his assailant]. [Defendant Doe No. 2] had a duty to ensure that Plaintiff was not harmed by the lack of supervision of [his assailant] . . . , and that Plaintiff was adequately protected from the behavior and conduct of [his assailant]." (Capitalization omitted.)

B. Analysis

We are satisfied that the allegations summarized above are sufficient to state a negligence-based cause of action against Defendant Anhalt. The complaint pleads a duty, breach of duty, and causation, and no additional facts were needed to get past a motion for JOP. (See, e.g., *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 264 [public employees are liable for injuries resulting from their acts omissions to the same extent as private persons].) The remaining question, therefore, is whether some other impediment precludes A.N.'s claims against Defendant Anhalt as a matter of law.

The trial court stated the following reasons in granting judgment on the pleading in favor of Defendant Anhalt: "Plaintiff [has] admitted that Anhalt was not at the facility at the time of the incident and was not a policy maker at the time. [¶] Any violation of internal policies [against double bunking of inmates], even if there was one, is not a basis for negligent liability against a public employee. This does not rise to a level of mandatory duty [under] Government Code [section] 815.6. [¶] Anhalt [also] appears to be immune on the grounds that any employee of a government entity is immune when the plaintiff fails to file a sufficient claim against the government entity itself. Government Code [section] 950.2."

While the trial court's assessment of the strength of A.N.'s case against Defendant Anhalt may be sound, we find that the stated grounds for granting JOP cannot withstand scrutiny. First, although the record discloses an apparent evidentiary basis for a finding of nonliability at trial, namely that Defendant Anhalt had not yet begun working his shift at the Sylmar juvenile facility before A.N. was sexually assaulted, such an evidentiary showing is beyond the scope of the facts alleged in A.N.'s complaint, and is not a proper subject for a motion for JOP.

Second, whether a policy against double bunking existed, the existence of such a policy is not necessarily fatal to A.N.'s negligence-based causes of action. A.N.'s allegations that Defendant Anhalt knew or should have known that A.N.'s assailant was dangerous, and that Defendant Anhalt nonetheless placed A.N. into a situation which exposed him to an attack by his assailant, and failed to supervise A.N. and his assailant, are sufficient to support a claim based on negligence. For purposes of a negligence claim against Defendant Anhalt in his individual capacity, it is not necessary that he violated a mandatory duty within the meaning of section 815.6.

This leaves us with the trial court's finding of "immunity" under section 950.2. That section provides that, where a plaintiff fails to file government claim against a government entity, the plaintiff may not sue the entity's employees. Such a claim, however, was filed in A.N.'s case. And as we previously noted, we are satisfied that insofar as the complaint alleges inappropriate "double-bunking" he was not precluded by

section 950.2 from filing an action against the County's employees, as they fall within the ambit of the government claim. Although it came to pass that the County was ruled to be immune from liability under section 844.6 for the claim made by A.N., this does not mean that no claim was filed in the first instance. And, of course, the immunity which applied to the County for claims of injury by one prisoner on another prisoner does not extend to Defendant Anhalt in his individual capacity. Section 844.6, subdivision (d), expressly provides: "Nothing in this section exonerates a public employee from liability for injury proximately caused by his [or her] negligent or wrongful act or omission. . . . ."

Finally, we address one more issue. During this appeal, we requested additional briefing from the parties on the question of whether Defendant Anhalt may be immune from liability under any other relevant provision of the law. Having now considered the parties' further arguments, we are not persuaded to end A.N.'s case against Defendant Anhalt.

Defendant Anhalt argues he is immune from liability under section 820.2, which provides that a public employee "is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him [or her], whether or not such discretion be abused." According to Defendant Anhalt, the *creation of policies* regarding the "double-bunking" of inmates in the juvenile hall would be an exercise of discretion, and this means he cannot be held liable for failing to establish such a policy. We do not address whether Defendant Anhalt is correct because his position does not negate the allegations which are found in A.N.'s complaint -- which allege that Defendant Anhalt committed acts, and/or failed to commit acts, which negligently exposed A.N. to the risk of an assault. A.N.'s complaint does not disclose facts showing that this scenario is encompassed within the ambit of any discretionary duty attendant with Defendant Anhalt's position with the County. In short, A.N.'s case, as pleaded, does not rely on a failure to create a double-bunking policy. If a policy did, in fact, exist, and Defendant Anhalt personally violated the policy, then such circumstances might factor into a determination of his negligence.

Defendant Anhalt also argues he is immune from liability under section 820.8, which provides that a public employee "is not liable for an injury caused by the act or omission of another person. . . ." According to Defendant Anhalt, section 820.8 operates to insulate him from liability "for the alleged negligence of . . . [the] guards actually on duty [on the] night [A.N. was assaulted] . . . ." Defendant Anhalt's cited legal rule is correct, but, again, it does not fit the facts framed by A.N.'s operative complaint, which allege Anhalt's own acts or failure to act that night. Section 820.8 expressly provides that "[n]othing in [the] section exonerates a public employee from liability for injury proximately caused by his [or her] own negligent or wrongful act or omission." The fact-based defense that Defendant Anhalt asserts may well be established at trial, but it cannot be resolved in the context of a motion for JOP.

DISPOSITION

The judgment on the pleadings entered in favor of the County is affirmed; the judgment on the pleadings entered in favor of Defendant Edward Anhalt only is reversed, and the cause is remanded to the trial court for further proceedings in accord with this opinion. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.